



## Missouri Department of Natural Resources

### MISSOURI CLEAN WATER COMMISSION MEETING

January 9, 2002

Governor Office Building, Jefferson City, Missouri

### MINUTES

#### **Present**

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission  
Arthur E. Hegi, Commissioner, Missouri Clean Water Commission  
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission  
Kristin M. Perry, Commissioner, Missouri Clean Water Commission

Brian Bingle, City of Nixa, Nixa, Missouri  
Alan J. Callier, Glaize Creek Sewer District, Lee's Summit, Missouri  
John E. Carter, The Doe Run Company, Viburnum, Missouri  
Randy Clarkson, Department of Natural Resources, Jefferson City, Missouri  
Marie Collins, Metropolitan St. Louis Sewer District, St. Louis, Missouri  
Larry Cooper, Four Seasons Lakesites, Lake Ozark, Missouri  
Ann Crawford, Department of Natural Resources, Jefferson City, Missouri  
Cindy DiStefano, Department of Conservation, Columbia, Missouri  
William J. Dorsey, City of Brookfield, Brookfield, Missouri  
Tim Eiken, Department of Natural Resources, Jefferson City, Missouri  
Jeff Elson, City of Brookfield, Brookfield, Missouri  
Kirby Finders, Department of Natural Resources, Jefferson City, Missouri  
Keith Forck, Department of Natural Resources, Jefferson City, Missouri  
Kit Freudenberg, Department of Conservation, Jefferson City, Missouri  
Bart Hager, Metropolitan St. Louis Sewer District, St. Louis, Missouri  
Edward Heckman, City of Brookfield, Brookfield, Missouri  
Bob Hentges, Missouri Public Utility Alliance, Jefferson City, Missouri  
Brian Hoelscher, Metropolitan St. Louis Sewer District, St. Louis, Missouri  
Sallie Keeney, REGFORM, Jefferson City, Missouri  
Patrick J. Lamping, Glaize Creek Sewer District, Barnhart, Missouri  
Richard J. Laux, Department of Natural Resources, Jefferson City, Missouri  
Tony R. Lerde, O&M Enterprises, Holden, Missouri  
Lance Livesay, Department of Transportation, Jefferson City, Missouri  
Sarah Maguffee, Four Seasons Lakesites, Jefferson City, Missouri  
Dennis Mason, O&M Enterprises, Holden, Missouri  
Colleen Meredith, Department of Natural Resources, Jefferson City, Missouri  
Donald E. Modesitt, Department of Natural Resources, Jefferson City, Missouri  
Rick Moore, City of Brookfield, Brookfield, Missouri  
Deborah Neff, Assistant Attorney General, Jefferson City, Missouri  
David Overhoff, Department of Natural Resources, Jefferson City, Missouri  
Kevin Perry, REGFORM, Jefferson City, Missouri

John Pozzo, Ameren, St. Louis, Missouri  
Bernie Rains, Metropolitan St. Louis Sewer District, St. Louis, Missouri  
Joy Reven, Department of Natural Resources, Jefferson City, Missouri  
Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri  
Gary W. Shaffer, City of Nixa, Nixa, Missouri  
Becky Shannon, Department of Natural Resources, Jefferson City, Missouri  
Shawn J. Singer, Department of Natural Resources, Jefferson City, Missouri  
Priscilla Stotts, Department of Natural Resources, Jefferson City, Missouri  
Scott B. Totten, Department of Natural Resources, Jefferson City, Missouri  
Steve Townley, Department of Natural Resources, Jefferson City, Missouri  
Nongluk Tunyavanich, Meramec Regional Planning Commission, St. James, Missouri  
Larry VanGilder, Taney County Regional Sewer District, Branson, Missouri  
Diane Waidelich, Secretary, Missouri Clean Water Commission  
Michael R. Walker, City of Brookfield, Brookfield, Missouri  
Robert Williamson, Kansas City Water Services, Kansas City, Missouri  
Steven Young, Department of Conservation, Jefferson City, Missouri

Chairman Herrmann called the meeting to order at approximately 9:15 a.m. and introduced Commissioners Perry, Hegi, and Kelly; Engineering Section Chief, Randy Clarkson; Secretary, Diane Waidelich; and Assistant Attorney General, Deborah Neff. Commissioners Minton and Greene were not in attendance.

### **Final Action on Storm Water Regulations Proposed Amendment**

Phil Schroeder, Chief of the Water Pollution Control Program Permit Section, reported the proposed changes to the Storm Water Regulations were published in the *Missouri Register* on October 15, 2001. A public hearing was held on November 28, 2001 with the comment period ending December 5, 2001. Mr. Schroeder summarized comments received on the proposed amendment.

- A request was made for an automatic waiver for communities with less than 1,000 in population. The commenter stated that the automatic waiver should be allowed because the majority of these small communities do not have the financial resources or the technical expertise to prove eligibility for the waiver requirements. Also, these communities only cover a small geographic area and usually do not pose serious water quality problems.

The state agrees with the comment and will add language to exclude communities that have less than 1,000 in population from needing to obtain a permit unless the state identified a water quality problem emanating from the municipality's storm water system and therefore designates that municipality as needing to obtain a permit. The rule will retain the language that allows the state to require a permit from these communities should the department determine that the water quality issue is essential and that the waiver criteria that is placed in the rules have not been met. Consistent with the federal rules, an application for a permit would be required within 180 days

after the community has been notified or designated by the state as needing to obtain a permit.

- A request was made for the use of Permit-by-Rule as the means to establish permit coverage for the small municipal separate storm sewer systems (MS4s). The use of Application Form E for permitting small MS4s was questioned and it was recommended that a new form be developed for accepting applications for small MS4s.

The statutes do provide for the use of Permit-by-Rule. The use of this permitting method would be beneficial toward reducing the regulatory burden on both the applicant and the state. However, the department does not believe that the requirements of the Phase II program would be satisfied through this approach. A Permit-by-Rule would only be effective where standard conditions can be developed for all participating municipalities. The cities are required under a phase II program to develop a specific storm water management plan that implements six minimum control measures and also specifies how they are going to measure the progress toward implementing those control measures over the term of the permit. The department must have a role in reviewing and approving these plans. Permit-by-Rule does not allow for this type of interaction. As an alternative that should streamline the issuance of permits, the state is developing a general permit that requires the submittal and approval of the requisite plan before a permit is issued. Once the plan is approved, the general permit can be promptly issued. The department feels it is not in the best interest to the applicants or to the state when a process demands a dialogue between the communities and the state to determine what is the best method to obtain storm water control and to protect waters of the state.

Form E contains essential information on the type of permit requested, name and address of the applicant, location of the proposed discharges and other information needed to determine whether or not the type of permit requested is appropriate for the proposed discharge. The department believes Form E does not present a good match for the Phase II program and will be modifying that form. The form will specify some schedules by which it needs to be filed with the state, the fact that a storm water management plan needs to be attached. The modified forms will be available for use by mid 2002.

- One person testified supporting the Phase II rulemaking.

The department will be moving forward with the rulemaking with some changes identified today.

Mr. Schroeder noted the following comments were not included in the commission's briefing material due to the hearing transcript just becoming available for review.

- One comment requested an increase to the width of the area allowed to be disturbed during trenching activities.

Current rules allow for an exemption from a permit if trenching does not disturb an area of more than two feet in width. Staff believes the current exemption is appropriate and should be retained in the rule. No change will be made as no evidence was presented as to why the additional width would be justified.

- A comment was made regarding subparagraph (1)(A) "All persons...point sources and" the word "and" should be changed to "or" so that if there is involvement with either of those activities, a permit is required.

The department agrees with making this change.

Commissioner Hegi asked that future briefing material pages be numbered for easier reference.

Commissioner Perry asked if staff is requesting the commission to make these changes in addition to the changes provided in the briefing material.

Mr. Schroeder acknowledged this is correct.

Commissioner Hegi asked if the commission would be voting on this today.

Mr. Schroeder responded he is explaining the additional changes now for the commission's information. He apologized for not being able to review the transcript prior to today. Mr. Schroeder noted the commission needs to take action today in order to meet the statutory requirements regarding rulemaking.

- Subparagraph (1)(C)15.A.-D. should not have been deleted.

(1)(C)16. is a definition of municipal separate storm sewer system. Staff should have added this information into the rule rather than deleting item 15. (1)(C)15.A.-D. should not have been deleted from the rule and staff will restore this language.

Commissioner Perry asked how the department addressed the comment made about permit-by-rule for land disturbance between one and five acres.

Mr. Schroeder responded the department wants to retain a general permit for this. Staff wants to design a new type of general permit where it can be offered over the counter. This is not permit-by-rule and still requires that application for permit be made for land disturbance under five acres. The applicant would be able to obtain the permit on the day they apply by bringing in an approval from the municipality that has a program within their municipal boundaries. This approval would state that they have reviewed the land disturbance activity of this individual or company and they approve the elements of it. The applicant would need to provide the required fee and fill out a short application form and sign it. This document would then become their permit. Mr. Schroeder noted this

process would do away with the delays currently involved in obtaining a permit for land disturbance under five acres.

Commissioner Perry asked if this process is in use now.

Mr. Schroeder noted the process is being designed. The rule does not address how general permits will be written and offered. The option is there for the state to design the general permits in the way they feel is in the best interest of the applicant, the department and the environment.

Commissioner Perry asked how long it will take to implement that process.

Mr. Schroeder responded the rule process takes a parallel track to the permitting process. The rulemaking will become effective in May 2002. While the rulemaking process is going on, staff is developing new general permits for handling these activities. Staff hopes to have general permit templates available for utilization by July 1, 2002. The schedule for having to have a permit in place is March 2003. Mr. Schroeder noted staff wants to be sure they have all their processes in place and give the state and the applicants ample time to understand the process, make application for a permit, and work on any application deficiencies so all permits can be in place by this deadline. Absolute conformance with the federal rule cannot occur because the process of rulemaking and the process of developing general permits are dictating when some of the key dates are met and when they come about. Mr. Schroeder noted the EPA rules anticipate that a general permit would be made available and effective on December 9, 2002. He explained it's very difficult to design a process and a program so that it's actually available on that date due to the comment period, working with stakeholders, and so forth.

Chairman Herrmann asked if the application would be made in the regional offices.

Mr. Schroeder responded the regional offices would be responsible for what is being offered in terms of those land disturbance activities within municipalities with storm water programs. For outstate land disturbance activities that may discharge to impaired waterways or to sensitive streams and things of this nature, the conventional general permit approach will be followed. The regional offices also have the ability to issue the standard general permit currently being issued from the central office.

Responding to Commissioner Hegi's question, Mr. Schroeder noted a new group of land disturbance between five acres and one acre is being included.

Commissioner Hegi asked how many problems there have been that have led to significant pollution on the areas of one to five acres.

Mr. Schroeder responded he personally couldn't give an example. Staff is promulgating rules in response to EPA's mandate to do so. This rulemaking is not based on Missouri's evaluation of the impacts of these types of activities but rather on the federal rule that says you must permit these activities. Mr. Schroeder noted staff is offering the easiest

permit they can for any activities thought to have very minimal or no impact. Missouri is mandated to issue the permits and does not intend to be any more or less stringent than the federal regulations.

Commissioner Hegi asked what effect postponing action on this rulemaking would have. He noted he couldn't vote for something when he didn't have all the information.

Mr. Schroeder responded the additional comments he summarized today should have been in the staff recommendation but he was unable to do that. He noted the commission did receive a copy of the public hearing transcript and the changes he requested today are minor in nature. Not taking action today would mean staff would have to begin the rulemaking process again.

Chairman Herrmann noted the commission is constrained by the statutory process.

Deborah Neff, Assistant Attorney General, responded if action were not taken today, the commission would have to go through the entire rulemaking process again.

Mr. Schroeder informed the commission the rulemaking process generally takes about one year. Beginning the process over would mean missing the federally imposed deadlines of getting the program in place and the general permit templates written and issued.

Commissioner Kelly moved to **approve the proposed amendment to 10 CSR 20-6.200 Storm Water Regulations as recommended by staff including the written briefing document and verbal explanation**; seconded by Commissioner Perry and passed with Commissioner Hegi voting against.

#### **Final Action on Aboveground Storage Tank Proposed Rules**

Tim Eiken, Hazardous Waste Program, reported a public hearing was held on the proposed Aboveground Storage Tank Rules at the November 28 commission meeting. He stated changes have been made to the proposed rules in response to comments received. Mr. Eiken summarized comments as follows.

#### **10 CSR 20-15.010 Applicability and Definitions**

- A comment by Commissioner Minton related to the applicability of the rules to farm tanks. Subsection (2)(B) contained language excluding farm or residential tanks of 1100 gallons or less. In addition, there was an existing exclusion based on the fact that farm tanks are not used for resale purposes.

Staff agreed that there was some confusion as to whether all farm tanks were excluded regardless of size. A change will be made exempting farm or residential tanks regardless of size used for storing motor fuel for noncommercial purposes.

- The Petroleum Storage Tank Insurance Fund (PSTIF) noted that the definition of Aboveground Storage Tank is the same as in their definitions and coverage documents for the insurance fund.

Staff responded that it was their intent to be consistent.

- Another comment by the PSTIF clarified that the definition of regulated substance in the proposed rule does include some alternative motor vehicle fuels that are not included in the definitions that govern the fund. PSTIF requested clarification of the effect of the fact that there are some tanks storing those types of fuels that will be subject to these proposed rules but are not eligible for coverage by the PSTIF.

The department is aware of this and no change will be made as a result of this comment.

- The Missouri Petroleum Marketers and Convenience Store Association concerned subsection (8)(A) and situations which are considered a confirmed release. Clarification was requested on who would be considered a qualified person in terms of discovering a release and establishing a release as confirmed.

This language was removed and clarification made that it will only be considered a confirmed release based on physical evidence of documentation of release at a site. A release will not be confirmed strictly based on a report regardless of the qualifications of the person who reports the release. Some physical evidence is necessary.

#### 10 CSR 20-15.020 Initial Release Response Measures

- The PSTIF supported the exceptions contained in the rule for release reporting requirements.

No change will be made as a result of this comment.

- Another comment from the PSTIF relates to section (8) concerning a site where there has been free product found at a site. The property owner is required to institute activities to recover that free product and requires those activities to be continued until the department determines otherwise. The comment expressed concern that in some cases it's appropriate to make changes to what kinds of activities they are doing and they shouldn't have to wait for the department's approval to do that.

Language was added to section (8) allowing a change in those activities provided they notify the department five days in advance. The department reserves the right to modify or deny the request based upon the conditions at the site.

- The Missouri Petroleum Marketers and Convenience Store Association commented on subsection (6)(B).

This section of the regulation allows some investigation of a site that has previously been closed and the tanks removed. This would be a situation where contamination was found and the department needs the ability to require the property owner of the formerly closed site to do some preliminary investigation to determine if the tanks that were formerly located there are the source of that release. Staff needs to have the ability to make that determination regardless of when the tanks were closed or removed. Staff clarified the situations in which this authority will be exercised but did not make any change to the rule language.

- Williams and Company questioned a reference to 10 CSR 20-15.050.

This reference should have been 10 CSR 20-15.030 and that change has been made.

#### 10 CSR 20-15.030 Site Characterization and Corrective Action

- The PSTIF noted the purpose statement for this proposed rule contained a sentence relating to activities contained under 10 CSR 20-15.020.

This statement has been removed from the purpose statement for 10 CSR 20-15.030 and added to the purpose statement for 10 CSR 20-15.020.

- The PSTIF noted that 10 CSR 20-15.030(3)(B) gives aboveground storage tank (AST) owners the option to voluntarily clean up a AST release even when it has not been required by the department. Clarification that the fund will not pay for those clean up activities was requested. The fund will only pay for clean up activities if they are being conducted as part of the requirement by the department. If they are voluntarily cleaning up the site, even though the department is not requiring it, that clean up is not eligible for reimbursement by the insurance fund. The PSTIF requested that this be clarified in correspondence regarding these types of sites.

Staff has agreed to this but proposed no changes to the rule language as a result of this comment.

- The PSTIF supported allowing corrective action be undertaken at a site before the actual receipt of written approval by the department.

Staff acknowledged this comment and no change was made to the proposed rule.

- A comment was made on 10 CSR 20-15.030(3)(E)1. relating to a requirement that the department be notified in writing prior to implementation of corrective action work at a site. This concerns a site that has been investigated and a corrective action plan for the site prepared. The written notification requirement is that the department wants to be notified prior to the implementation of clean up work under that corrective action plan.



There was some confusion on the part of the commenter as to whether that written notification requirement also applied to the initial release response measures at a site. Clarification that this requirement does not apply was given and the reasons for wanting to be notified in writing prior to implementation of the corrective action plan were given. No change was made as a result of this comment.

- Williams and Company questioned a reference to 10 CSR 20-15.040.

There is no rule number 10 CSR 20-15.040 and this is reflected in the final language of 10 CSR 20-15.030.

Mr. Eiken requested the commission approve the Orders of Rulemaking as they were presented in the briefing material.

Commissioner Hegi asked where the money for the PSTIF comes from.

Mr. Eiken responded the PSTIF is supported by various fees on the petroleum marketing industry. There is an annual registration fee to participate in the fund. Most of the money comes from a transport load fee which is a fee assessed on each load of petroleum that is brought into the state. It is voluntary as to whether owners of aboveground or underground storage tanks participate in the fund. It is an option they have toward providing insurance to clean up any releases of contamination at their sites. There are certain aboveground storage tanks that are eligible to participate in that fund. For the most part, those are the same tanks covered with these proposed rules.

Commissioner Hegi asked what is required to be reported.

Mr. Eiken responded anything less than 50 gallons does not trigger the reporting requirements. The rulemaking has an exception for releases of 25 gallons or less. Releases greater than that but contained in secondary containment and immediately cleaned up also do not have to be reported.

Ms. Neff asked if the PSTIF is a part of the Department of Natural Resources.

Mr. Eiken responded the PSTIF is administered by and housed within the department, but not a part of the tanks program.

Commissioner Hegi moved to **approve 10 CSR 20-15.010, 10 CSR 20-15.020 and 10 CSR 20-15.030 as recommended by staff**; seconded by Commissioner Perry and unanimously approved.

### **Update on Status of Special Infrastructure Grant Funds**

Steve Townley, Chief of the Water Pollution Control Program Financial Services Section, reported on the Special Infrastructure Grant Funds that were provided by a congressional appropriation for the phosphorus removal programs in the Table Rock Basin. He stated the FY 03 Intended Use Plan is being mailed today and a public hearing

will be held at the February meeting. Mr. Townley stated the congressional appropriation provided approximately \$5.2 million to be provided to communities in the Table Rock basin by a 55% federal grant. This was matched with a 25% state grant and provided the opportunity for communities wishing to participate to receive a 20% state loan for the entire funding package.

Staff estimates federal funds will be \$2.3 million short leaving the following communities without funding: Branson West, Clever, Crane, Diggins, Fremont Hills, Galena, and Reeds Spring. Mr. Townley stated options are to request additional federal funds to allow all of the communities to proceed with their projects; look at state grant funds to see if the 25% state match grant could be increased to bridge the gap between funds; relax the regulation; develop a special loan program for the remaining communities; a combination of all the options; or don't provide any additional opportunities for funding assistance.

Mr. Townley reported the commission will be reviewing a request for additional funds under the next agenda item. If this request is approved, the balance of uncommitted funds will be down to approximately \$147,000. Accommodating further increase requests or changes in scope will be difficult under this program.

Commissioner Hegi asked if Arkansas has any programs to reduce phosphorus.

Mr. Townley responded he is not aware of any special appropriation funds being made available to Arkansas for a similar program.

Commissioner Hegi reiterated his previous concern about Arkansas contributing to the phosphorus load and not being able to solve this problem as long as this continues.

Responding to Commissioner Perry's question, Mr. Townley stated estimates may go back as far as the original cost estimates developed during the regulation promulgation process while others could be from updates received through the Needs Survey or work that is ongoing at the community level. He noted some numbers could be low.

Commissioner Perry asked if staff is communicating with these communities.

Mr. Townley responded periodic communication continues to occur.

Commissioner Hegi asked if this applies only to surface discharge of waste.

Mr. Townley noted that is correct.

Commissioner Hegi asked if all the septic tanks discharging around Table Rock Lake and in Arkansas are not regulated as far as phosphorus removal as long as they don't surface discharge.

Mr. Townley noted that is probably correct.

Commissioner Perry asked if additional federal funds are feasible.

Mr. Townley responded he is not aware of any ongoing activities at this time.

Responding to Commissioner Hegi's question, Mr. Clarkson stated there are varying deadlines for communities to comply with phosphorus limitations.

Mr. Townley stated communities with 100,000 gpd down to 22,500 gpd have until 2007 to comply.

**Nixa Request for Additional Phosphorus Funds**

Joy Reven, Water Pollution Control Program Financial Services Section Project Coordinator, reported the City of Nixa opened bids in December. The total construction bid was \$9.929. Ms. Reven stated the city has \$3.88 million in phosphorus eligible costs. The city is asking for \$2.2 million in grants to cover the phosphorus share. The city is willing to fund the remainder of the cost. Of the total project cost of \$10.5 million, the city is covering \$8.3 million. Ms. Reven noted because Nixa has over 1 mgd, they have to comply with the cost earlier than others in this watershed. Phosphorus limits will have to be met by November 2003. Ms. Reven concluded that other projects on the list will not be affected by giving these contingency funds to Nixa.

Commissioner Perry asked if Branson West is on the contingency list because they do not have to be in compliance by the end of this year.

Ms. Reven responded Branson West is on the contingency list because they did not meet the application deadline last year and their priority points are about one-half of what Nixa's are. When the Intended Use Plan goes to hearing in February, there will be other communities who rank above Branson West who won't be eligible for that money because the money is no longer there.

Randy Clarkson, Chief of the Water Pollution Control Program Engineering Section, stated Branson West could possibly do a phased project to meet the interim phosphorus limits by 2003 and final limits by 2007. The remainder of the communities have a six-year deadline to meet the phosphorus limits.

Commissioner Perry asked if anyone has evaluated the increase for whether it is actually necessary.

Chairman Herrmann asked what the total cost of the project is.

Ms. Reven responded the total amount of construction is \$9.8 million.

Chairman Herrmann asked how the costs relative to phosphorus removal were separated in the total bid to determine this amount.

Ms. Reven stated it was a line item bid and there were three sections.

Commissioner Perry asked if these costs are appropriate.

Ms. Reven responded she believes they are and the city and its consultant agree. There were three bids and the lowest is a very good contractor. Ms. Reven noted the city is bearing more than 80% of this project cost.

Commissioner Hegi stated he had the same question about Rogersville. Cities are trying to solve problems ten years into the future and there is not enough money to solve today's problems. He noted the biggest part of these communities have done a tremendous job of taking care of their problems.

Chairman Herrmann noted background including population, flow, and how the dollar amount was verified would help educate the commission to make a decision.

Responding to Commissioner Hegi, Ms. Reven stated the plant was designed for 4 mgd.

Commissioner Hegi asked if this is a superior plant or just what's needed.

Gary Shaffer, Shaffer and Hines, stated the state mandates some fairly sophisticated equipment to remove the phosphorus. He noted this is just a very large project since the city is growing so quickly.

Chairman Herrmann asked how many bidders there were on the project.

Mr. Shaffer responded there were 11 general contractors who originally took plans but, because of the size of the project, a lot of contractors dropped out.

Commissioner Hegi moved **to approve the City of Nixa's request for additional phosphorus funds as recommended by staff**; seconded by Commissioner Kelly and unanimously passed.

Chairman Herrmann asked that staff keep the commission updated on activities regarding the Special Infrastructure Grant Funds.

**Dismissal of Sycamore Springs Mobile Home Park Variance Request and Application for Transfer**

Ms. Neff reported the commission tabled the matter at its November meeting and an agreement between the parties has since been reached. The Stieren's have filed a Motion to Withdraw Without Prejudice in conjunction with the agreement. Ms. Neff asked that the commission vote on the motion.

Commissioner Perry moved to **approve the Motion to Withdraw Without Prejudice the variance application and application for transfer regarding Sycamore Springs LLC**; seconded by Commissioner Hegi and unanimously passed.

The commission signed the order.

**Commission Action on Preliminary Staff Recommendation Regarding Glaize Creek Variance Request**

Mr. Townley reported this item was discussed at the November meeting but the applicant did not receive notice that this would occur so the issue has been brought back to the commission.

The Glaize Creek Sewer District is upgrading the existing facility, adding additional capacity, constructing an outfall line to the Mississippi River and looking to some improvements to the collection and transportation system not related to this request. Mr. Townley reported the district's request for proposals was published in the local paper May 15, 2000. Bids were opened after a total of 24 days of advertisement. The district understood that the request to publish in the newspaper of record was submitted well in advance of the actual publication date and that it went in the paper in a timely fashion. When staff inquired about the advertisement, the district found they had missed the 30-day requirement.

Alan Callier, Glaize Creek Sewer District, reported the district phased this project in order to have considerable participation by contractors. At the time advertisement was done, the district was not in the SRF process. The 24 days did not violate any county or district policy. Mr. Callier noted there has never been a challenge to the district regarding any project that has gone out on bid. Bids for installation and rehabilitation of the existing plant have since gone out. These both had over 30 days for the bid period. Only on the projects in the bid process prior to the district being in the SRF process was there less than a 30-day bid period. Plans were available at the district and consultant's office. Mr. Callier noted all the projects came in under the engineer's estimate. The engineer had spoken with contractors and they were aware of the project. Mr. Callier noted the district did not sign any contracts until they were able to incorporate all the SRF requirements.

Commissioner Hegi asked where the sewer district is located.

Mr. Callier responded it is south of St. Louis.

Pat Lamping, Executive Director of the Glaize Creek Sewer District, reported the district traditionally advertises for an extended period of time. He noted the district delayed entering into contracts when they were advised there was a possibility of participating in the SRF. Mr. Lamping stated the proposals were advertised on May 15 and bids were received on June 8 and he personally spoke with three contractors. He noted they are one of the few districts in Jefferson County that has had capacity to share with other districts and hope to create an environment to deal with growth related issues.

Chairman Herrmann noted the contractors he spoke with are all from Jefferson County and the affidavit of publication is from the Jefferson Watchman, which is a weekly publication distributed only in Jefferson County.

Mr. Lamping replied the cost of publication of the request for proposals was less than \$200 in the Jefferson Watchman. The same ad in the St. Louis Post Dispatch, the only other newspaper of record, would cost around \$1800. Mr. Lamping stated the district will not pay this for an ad because the additional cost would not generate that much response. He noted the contractors in Jefferson County are very familiar with the Jefferson Watchman. The county publishes only in the Watchman because people recognize this is the legal publication for the county.

Chairman Herrmann noted these plans had been placed only in the engineer's office, not in any of the accepted plan rooms which have a much greater circulation than the Jefferson Watchman.

Commissioner Perry asked if the project was started before the district became aware of the possibility of SRF funding.

Mr. Lamping responded that is correct.

Commissioner Perry noted only the first phase is at issue because subsequent phases comply with the regulation. She asked if other projects that were in compliance with the regulation will be harmed by the commission approving this request and if the commission is establishing a bad precedent by taking this action.

Mr. Townley replied the Glaize Creek Sewer District is on the IUP for \$3.5 million which is the entire scope of their programs. Any commission action will not impact any other community that might be on the IUP or seek funding in the future; all projects go through the same process.

Commissioner Perry asked for a comparison of the cost to the district if they would not use SRF funds.

Mr. Lamping replied there is a 20-year lease at 5.25% for the entire cost of the project.

Mr. Townley noted the SRF is less than 2%.

Mr. Lamping reported the estimate was a savings of \$1/2 million in interest payments only. It has cost the district almost \$100,000 in funds that the district would not have paid to get to this point if they had not decided to participate in the SRF program. It cost an additional \$20,000 in construction costs because of delaying the project. Mr. Lamping noted the district would end up saving \$400,000, which is a great deal of money to the district.

Commissioner Perry asked if there is a problem with communities and sewer districts becoming aware of the SRF program.

Mr. Lamping responded he believes the biggest problem the SRF has is that it is an administrative nightmare but the savings outweigh the difficulty. He noted Mr. Townley has been to Jefferson County several times to discuss the SRF.

Commissioner Hegi asked why the SRF is such a nightmare.

Mr. Lamping responded any time you deal with federal regulations and funding from one source to another there are programmatic issues that have to be implemented. There are probably some things that could be changed but it should not be easy for communities to participate in the program. Mr. Lamping stated it is the district's responsibility to know what types of funding are available for public sanitary sewer projects. He noted the SRF is best used by the communities that start with the SRF from the beginning; the SRF needs to be part of the initial consideration.

Commissioner Hegi asked if the district would have to rebid if the commission does not approve the request.

Mr. Lamping replied the construction, installation and equipment for construction of the new facility is complete. The 1 mgd plant is currently in service. The renovation of the existing facility and the purchase of equipment for that facility is still ongoing.

Mr. Townley noted there are three communities present today with advertising shortfalls. He stated he does not want to build hurdles for these communities but a regulation is in place and staff has to accommodate all of the communities in accord with the regulation. Mr. Townley noted staff needs to identify in regulation revisions a definition for a plan room.

Commissioner Perry asked if more communities will make this request to the commission.

Mr. Townley responded he is not aware of any more but it could occur again. He noted the definition of adequate participation also needs to be identified.

**Commission Action on Preliminary Staff Recommendation Regarding MSD Lower Meramec River Wastewater Treatment Plant Variance Request**

Ann Crawford, Water Pollution Control Program Financial Services Section Project Coordinator, reported the Metropolitan St. Louis Sewer District (MSD) requested a variance to 10 CSR 20-4.040(19)(B)1. as did Glaize Creek.

Ms. Crawford reported staff findings as follows: The Lower Meramec Wastewater Treatment Site Preloading Phase I is eligible for State Revolving Fund participation; the Public Notice was published in six newspapers and journals and the Notice to Contractors and plans and specifications were sent to four agencies or groups; forty-four contractors received individual notification by mail; the project was submitted to the Dodge Report on May 24, 2001; the project was advertised 21 days, not in accordance with the commission regulation but, in accordance with standard bidding procedures for all MSD

projects that are not funded by the SRF; contractors who normally bid on MSD projects are familiar with their timelines and constraints; the purpose of the advertising requirement in the rule is so that adequate notice is given to ensure competition and adequate time to prepare bids; the district received four bid proposals; there are no protests from contractors, who bid or did not bid, on the bidding procedures used by the district; 10 CSR 20-4.040 (19)(B)1.B. requires that there be a minimum of thirty days advertising prior to bid opening.

Ms. Crawford stated the commission's action on this request would not affect any other projects on the IUP. There are adequate funds in the SRF and this is an ongoing project.

Ms. Crawford noted staff is supportive of the project but recommended denial of this request because it is not in accordance with the commission regulation.

Chairman Herrmann asked when the bids were received.

Ms. Crawford responded bids were received on June 13.

Marie Collins, Metropolitan St. Louis Sewer District, introduced Brian Hoelscher who provided additional information to the commission. She continued that the plans were also submitted to the Construction Market Data, The Contractors Assistance Program, Inc. and MoKan. Ms. Collins reported this project was identified by the sewer district in their capital improvements program budget supplement in 2001. She continued this is a public document and the construction community knew in the spring of 1999 that projects regarding the Lower Meramec were upcoming. Since July 1998 through May 2001 there were more than 20 references to the Lower Meramec Treatment Plant construction in newspaper articles in the St. Louis Post Dispatch. In December 2000, the headline article stated that the first project would be bid in the spring of 2001.

Regarding the adequate time to prepare the bid, Ms. Collins noted there are three components that should be considered regarding meeting the adequacy requirement. The district uses standard bidding packages for all of its projects. There is a package for lump sum projects, which this project was, and one for unit price projects. MSD uses a modification of the standard general conditions of the construction contract prepared by a joint committee of some national organizations. In the last three years MSD has bid 21 projects for over \$40 million using this standard contract. Contractors who are prequalified with the district are extremely familiar with the contract language in the document. This is a rather simple project where the contractor is required to install geotechnical monitoring equipment, dewatering equipment, do standard erosion control, haul, compact and put top soil on and sod dirt. Of the four contractors who submitted bids, there were three or four subcontractors listed in the bid. Ms. Collins explained the 21-day bidding period is the standard for most of the district's projects. She brought the commission's attention to an affidavit in the material provided to them which states that the 21-day bidding period is typical for all MSD projects and they have historically felt this to be adequate for preparing any project. Ms. Collins stated she reviewed material on 164 projects MSD has bid out since 1998 and 125 of them were bid for less than 30 days.



She continued the district has not received any official complaints that this is not an adequate bidding time.

Ms. Collins stated it is the district's intent to do a 30-day bidding period for all projects involved in the SRF. In this particular case, it was a miscommunication within MSD where it was not recognized that this project was in the SRF and the bidding date was set for 21 days instead of 30.

Commissioner Perry asked what the financial impact is on MSD.

Ms. Collins replied it is the same as Glaize Creek. It is very important to meet the obligations and goals that have been set to be in the SRF program.

Commissioner Perry asked if the MSD was not initially interested in being in the SRF program.

Ms. Collins responded this project is approved to be in the SRF program but an internal miscommunication caused failure to adhere to the 30-day period.

Chairman Herrmann inquired about the cost project.

Ms. Collins replied this is a \$9 million project.

Commissioner Hegi asked if 21 days is the normal advertising time across the state.

Ms. Collins stated it is the normal bidding period within MSD. Depending on the complexity of the project, MSD has had bidding periods of up to 40 days.

Chairman Herrmann stated the regulation states that the public notice will be published in an area newspaper of general circulation and/or contractors' publications. MSD's notice to contractors goes out regularly on upcoming projects.

Ms. Collins replied in March 2001 the Associated General Contractors (AGC) site committee asked for and was provided a four-month bid list on which this project was listed. Members of the site committee or AGC contractors prequalified to bid this particular project numbered 34 of the 44.

Commissioner Hegi asked if the 30-day requirement could be changed.

Mr. Townley replied the 30-day requirement is a carryover from the old construction grant program that terminated around 1989. The requirement from federal regulations that was carried forward is to provide maximum, free and open competition. EPA defined that at the time as 30 days. This was carried forward because it was known by the consulting and contracting community at the time.

Chairman Herrmann noted the time depends on the complexity of the project.

Mr. Townley noted he agrees with Ms. Collins that you look at the complexity of the project and the amount of time it will take contractors to respond.

Chairman Herrmann noted the regulation says and/or contractors' publications.

**Commission Action on Preliminary Staff Recommendation Regarding City of Brookfield Variance Request**

Mr. Townley reported the City of Brookfield appeared on last year's IUP and monies are available for this project. The city was bidding sewer line collection and transportation systems within the community. The engineer's estimate was approximately \$1.25 million. There were seven plan holders and four bidders. A public notice was placed in *The Brookfield Daily News-Bulletin* on January 24, 2000. Bids were opened on February 16, 2000 for a total of twenty-four days of advertisement. The city's consulting engineer maintains that the plans were available in the firm's plan room prior to the advertising start date. Staff interpreted the commission's definition of plan room to be such as the Engineering News Record, The Dodge Report, MoKan publications, and others. Mr. Townley noted staff asked the consultant if there was a prescribed mailing of documents to be found in the plan room but there is no formalized procedure to identify to contractors that these materials are available in the plan room nor is there a public viewing area that has the information posted.

Commissioner Perry asked what the staff recommendation is regarding the Glaize Creek and City of Brookfield variance requests.

Mr. Townley replied the only recommendation could be to deny the requests in accordance with the regulation.

Mr. Hegi asked about changing the bidding time to 21 days retroactive to the first of the year.

Ms. Neff replied the regulation is what it was on the date that bids were opened. If someone bid on the project and was not the successful bidder and they found there was a violation in the regulation that existed on that date, they could sue.

Commissioner Hegi asked if threat of a lawsuit is the issue.

Ms. Neff responded the potential exists.

Commissioner Perry noted this threat would also exist if the variance were granted.

Mr. Townley stated there have been no protests or grievances filed relating to any of these projects.

Commissioner Perry noted a contractor would have to prove that they would have bid differently or have bid in the additional days.

Mr. Townley noted that is generally done in a protest where they identify that they did not have sufficient time to prepare their bids.

Ms. Neff noted she is not familiar with the statute of limitations on protests.

Jeff Elson, attorney for the City of Brookfield, introduced Mayor Dorsey, Councilmen Walker and Heckman, and city manager Rick Moore. Mr. Elson stated they had a 24-day bid period and their engineer believed 21 days was the legal bidding requirement. When Brookfield voted the bond issue, residents were told the community would be participating in the SRF program and their sewer and water rates would be based on this participation. Mr. Elson stated all of the provisions of the SRF program were incorporated into the contractual and bid documents and all contractors were aware that it was an SRF project. The SRF project means \$783,000 to the city. As of November 2001, Brookfield has the third highest unemployment rate in the state. Approximately 90 homes have been connected to a public sewer for the first time. If the SRF funds are not made available to Brookfield, the community will not be able to make improvements to the system. Mr. Elson reported the successful bidder was under the engineer's estimate on the entire project and there was plenty of competition on the project. He concluded that the residents would be harmed if Brookfield does not receive the SRF funds and no one will benefit.

Commissioner Perry asked if four bidders is normal for this type of project.

Mr. Elson replied three and four are not unusual. He provided information on unsuccessful bidders having no standing to sue. Mr. Elson noted the second lowest bidder provided a letter to the commission stating he has no problem with the bid.

Mr. Clarkson noted Ms. Neff is making some calls to find out about the statute of limitations.

Commissioner Hegi asked if there is any grant money involved in this project.

Mr. Elson stated the project is publicly financed. One of the reasons the council elected to take this huge bond issue to the people is because the community assumed they would benefit from SRF funds and they could afford it.

Chairman Herrmann noted the list of 24 contractors or organizations to which the notice was sent has a bid date but no date of publication or mailing.

Mr. Elson replied he may not have the actual dates of mailing.

Chairman Herrmann stated notification to Construction Market Data and F W Dodge is listed.

Mr. Elson noted this was done after the 30-day period. It was given to plan rooms but was not done prior to 30 days.

Chairman Herrmann noted other information said plans and specifications were listed in the engineer's plan room.

Mr. Elson replied prior to 30 days the engineer has certified that those plans were available in his plan room. The plans were then submitted to recognized plan rooms but not prior to 30 days before the bids were opened.

Commissioner Hegi asked if the community has applied for grant money.

Mr. Elson replied the community had an antiquated system. In order to be economically competitive, the community had to do something with the infrastructure as soon as possible to preserve employment in the area. To obtain grants for a water and sewer project might have taken much longer. Mr. Elson explained the community could later seek a reimbursement grant to retire their bonds.

Responding to Commissioner Hegi's question, Mr. Townley explained the funds Brookfield would receive through the SRF would be 83% federal funds and 17% state funds.

Commissioner Hegi asked who makes up the difference between the 2% and 5% interest rate.

Mr. Townley responded the federal funds come through a grant that the state receives from EPA in lieu of the old construction grant program. These monies are then matched by state water pollution control bonds and those monies are then deposited into the reserve fund to provide the interest rate subsidy to the community.

Chairman Herrmann noted it has been in place long enough to become partially self-sustaining because of payments of previous loans.

Mr. Townley stated the repayments back into the fund are then reloaned as monies are needed to address other needs across the state.

Chairman Herrmann noted the program has a zero default rate.

Mr. Elson reiterated the \$1.25 million project for will cost the city \$783,000. The project is almost completed but the city cannot afford to pay this amount over the next 15-20 years and make further improvements.

Mr. Townley stated the user charge rate for Brookfield will be approximately \$25 a month if they participate in the SRF. It will rise considerably without SRF participation.

Chairman Herrmann asked if there are funds available for these projects in the SRF.

Mr. Townley responded funds are available and no other communities will be affected. Staff has assumed these communities would access these funds as the draft FY 03 IUP was developed.

Ms. Neff noted she is not familiar with the bidding process and what the statute of limitations are. She noted she tried to contact the General Counsel for Design and Construction but she is out until later.

Chairman Herrmann noted Mr. Elson provided some information on this.

Ms. Neff stated if you don't follow a regulation, the allegation could be made that the whole bidding procedure was void. She explained she is not talking about rejecting the lowest bidder in favor of another but whether violation of a state regulation will set aside the bidding procedure.

Mr. Elson noted the General Assembly has given the Clean Water Commission authority to grant a variance or waive any rule or regulation.

Ms. Neff stated that is ordinarily prior to the violation.

Mr. Elson stated he believes the Clean Water Commission has the authority to waive or to vary any law or regulation promulgated under Chapter 644.

Ms. Neff responded she believes the commission has the authority to grant the variance but she does not know whether granting the variance will provide protection from litigation and having the bidding procedure set aside.

Mr. Elson stated the community would be sued and not the commission.

Ms. Neff responded the commission would be a party to the suit.

The commission adjourned for lunch at approximately 11:55 a.m. Ms. Neff was to check further on this issue during the lunch break.

Chairman Herrmann reconvened the meeting at approximately 12:50 p.m.

#### **Commission Action on Variance Requests**

Commissioner Hegi moved to **preliminarily approve the Glaize Creek Variance Request**; seconded by Commissioner Perry and unanimously passed.

Commissioner Perry moved to **preliminarily approve the Metropolitan St. Louis Sewer District's request for variance**; seconded by Commissioner Kelly and unanimously approved.

Commissioner Hegi moved to **preliminarily approve the City of Brookfield's request for variance**; seconded by Commissioner Kelly and unanimously approved.

Based on the commission's action today, Mr. Townley stated staff will notify the applicants and individuals on the mailing list within the county where the entity is located

of the commission's action. The commission can then grant final approval of the variance at a subsequent commission meeting without a hearing after a 30-day public notice.

Chairman Herrmann asked what list is used to notify those concerned.

Mr. Laux responded the commission's mailing list for individuals who want to be notified of public hearings, proposed rulemaking and variance activities is used. Recent practice has been to include the notice of the commission's intent to approve a variance in the public notice packages, which is available over the Internet. The statutory requirement is to use the commission's mailing list to determine who, at a minimum, needs to be notified.

Chairman Herrmann asked if the commission meeting agenda is not sufficient public notification to the parties.

Mr. Laux noted it is not considered sufficient because the commission has not indicated its intent to accept or not accept the staff recommendation. The statute reads that the commission's preliminary determination is to be public noticed.

**Nonpoint Source Management Program, FY 2002 Project Priorities**

Becky Shannon, Nonpoint Source Coordinator, reported the Nonpoint Source Management program is carried out through voluntary activities. The grant cycle begins with a solicitation for proposals from eligible sponsors. The FY 2002 request for proposals went out in July 2001. Ms. Shannon noted the typical schedule is to send proposals out in February but the change was made to decrease the period of time between when the applications are received and when the funding is actually available to make it easier on the project sponsors.

Ms. Shannon informed the commission eighteen project applications were received. An interagency peer review committee interviewed sponsors of each project, evaluated the projects, and recommended a ranking to the department. The eighteen projects exceed the amount of funds available for funding projects. The projects are evaluated with the eligibility criteria from EPA given the amount of money available and the type of projects. Projects are funded as far as the money will reach. Ms. Shannon reported the award from the federal government is \$5,357,500. Of that, about \$4 million is passed through for projects.

The recommendations are sent to EPA as a grant application for approval. Ms. Shannon stated after EPA approval of the projects, staff works with the project sponsors to make any needed changes to the projects to ensure their eligibility and to make sure they are in compliance with Missouri's Nonpoint Source Management Plan.

Chairman Herrmann asked how many projects on the priority list staff expects to be able to fund.

Ms. Shannon responded she expects to fund through project ten. There are sometimes funds remaining from previous projects that are made available to apply to these projects.

Chairman Herrmann asked if staff will come back to the commission with a recommendation on which projects to fund.

Ms. Shannon explained staff normally asks for the commission to approve the priority list and allow staff to make the funding go as far as possible. Staff works directly with EPA to do the actual project funding approval. Ms. Shannon noted she appreciates Commissioner Perry attending the all-day review session of these projects with the interagency review committee and her input was a valuable asset to the discussions.

Commissioner Hegi stated he sees a tremendous amount of money being spent for education and questioned this. He continued that instead of saying these are federal or state grants, they should be called grants from the taxpayers.

Chairman Herrmann noted he was not able to attend the review session to develop a priority rating. He stated all of these projects are intended to be used in reducing environmental effects from runoff. Chairman Herrmann stated project 8 seems like a nice thing to do but one that won't produce results other than perhaps to somewhat educate some youth.

Commissioner Perry asked if there were 19 projects submitted.

Ms. Shannon responded she recalled 18 projects.

Commissioner Perry questioned which one was the project through the City of Frontenac.

Ms. Shannon replied that project 11 is proposing to educate people about the urban stream management activities that they've done in Fishpot Creek and project 12 is intended to work with development in the City of Frontenac to install best management practices in that development process.

Commissioner Perry noted she would not support projects 11 and 12.

Chairman Herrmann noted he agrees from an engineering standpoint.

Commissioner Perry stated this seems to be using 319 funds to present engineering techniques, which is inappropriate.

Ms. Shannon noted it would be acceptable if the commission approved the ranking to a certain project.

Commissioner Perry noted her objections might be moot if the funding does not reach past project 10.

Commissioner Hegi commented most of these projects are the results of people who write grants and it's a farce.

Commissioner Perry noted project 12 regards a \$12 million shopping center where they developed alternative ways to get water off the parking lot. She stated this will cost the taxpayers \$1.5 million which can be much better targeted in other ways and is inappropriate in this forum.

Ms. Shannon stated there are circumstances when the lower ranked projects could get funded if one of the higher ranking projects is not able to make use of the funds. She noted it would be prudent to make known any project the commission does not want funded.

Commissioner Hegi noted project 1 asked for only \$45,000 of an \$821,000 project and asked why someone would want to go through this process for that small amount of money.

Commissioner Perry noted the entire panel was impressed with the quality of this project presentation.

Ms. Shannon replied there are other funding sources supporting other activities in this project.

Commissioner Perry asked if project 3 was not fundable because it was research.

Ms. Shannon responded the EPA representative present at the review session agreed that it could be considered assessment and fundable through the 20% money.

Chairman Herrmann asked what the justification was for project 8.

Ms. Shannon responded this is competitive so it's not discretely evaluating the one project but rather competing it with the other projects. She continued this is a project from a past successful sponsor and is patterning the project after a very successful existing project, Bryant Creek watershed. A web site has been developed that's quite impressive and is used a lot as an educational and awareness tool. Those are the two main factors that went into play in considering it a good activity.

Chairman Herrmann noted it's an educational project, not a physical improvement or research.

Commissioner Perry commented this money couldn't be used for research.

Ms. Shannon noted the project mentioned earlier is considered to be assessment because they will be looking at a number of factors within the stream to assess impacts of different land use.



Commissioner Perry stated she would like to see projects 11, 12, and 18 eliminated from the priority listing.

Commissioner Hegi asked who Bridging the Gap is in project 16.

Ms. Shannon responded it's a not-for-profit firm in the Kansas City area who has been heavily involved in recycling efforts over the years.

Commissioner Hegi asked if this had been developed just to create a job.

Ms. Shannon replied they have been in existence for years.

Commissioner Perry moved to **accept the Nonpoint Source Management priority list with the exception of projects 11, 12 and 18**; seconded by Commissioner Hegi and passed with Commissioner Kelly voting against.

#### **Commission Action on November 28, 2001 Meeting Minutes**

Commissioner Kelly moved to **approve the November 28, 2001 meeting minutes as submitted by staff**; seconded by Commissioner Hegi and unanimously passed.

#### **Phosphorus Control for Wastewater Treatment Processes**

Mr. Clarkson stated this presentation is in response to interest expressed by the commission members on phosphorus and other issues. The first phosphorus rulemaking was completed for Lake Taneycomo. A workgroup was formed that recommended a 0.5 mg/l limit which was adopted by the commission. A workgroup was later established to evaluate if something needed to be done for Table Rock Lake and the James River. These efforts resulted in the commission adopting the present rule. Mr. Clarkson stated all discharges to the James River, Table Rock Lake, and Lake Taneycomo watersheds have phosphorus limits of 0.5 mg/l. All existing facilities less than 22,500 gpd are exempt from this limit. All new discharges must meet the 0.5 mg/l phosphorus limit upon startup.

Responding to Commissioner Hegi's question, Mr. Clarkson said if maintenance work is done on the system, it would still be exempt. If an expansion of capacity is done, it has to be treated as a new discharge.

Mr. Clarkson continued that 1 mgd and over must comply with phosphorus limits by November 30, 2003. From 100,000 gpd to 1 mgd must meet 1 mg/l by November 30, 2003 and the final limit by November 30, 2007. The facilities from 22,500 gpd to 100,000 gpd must meet the 0.5 limit in six years. Mr. Clarkson introduced Don Modesitt of the engineering staff.

Mr. Modesitt presented information on chemical addition, microbial uptake, plant and soil uptake, mechanical plants, recirculating sand filters, constructed wetlands and land application. He concluded that phosphorus never goes away.

**Four Seasons Lakesites, Inc.**

Sarah Maguffee, representing Four Seasons Lakesites, introduced Larry Cooper of Four Seasons Lakesites. Ms. Maguffee stated this issue involves a permit to construct a sewer extension in a small part of the Shawnee Bend Subdivision called La Riva Est 1 and 2 that Four Seasons Lakesites applied for on May 25, 2001. The question at this point is whether the commission policy from 1982 prohibits the Department of Natural Resources from granting the application for a construction permit for a sewer extension. All the requirements for the permit have been met and granting the permit will not cause a violation of the Missouri Clean Water Law or regulations. Ms. Maguffee reported Four Seasons Lakesites is the developer of the communities on Shawnee Bend including La Riva Est 1 and 2 which are the two areas that would be affected by this sewer extension. Lake Region Water and Sewer Company is the continuing authority for Shawnee Bend Subdivision including La Riva Est 1 and 2.

Ms. Maguffee stated there have been issues with the sewer company in the past. The sewer company holds a construction permit for an interim wastewater treatment plant on Shawnee Bend. That permit expires March 29, 2002. Lake Region has applied for a permit modification to the department to significantly expand that treatment plant. It is understood that Lake Region supplied the department with a signed construction contract yesterday as well as bank statements showing that adequate funds are available to pay for the expansion to the treatment plant.

Ms. Maguffee stated she understands the department intends to grant Lake Region's request for a modification to the permit to expand the plant and its capacity but keep the same March 29 completion date. This would obligate Lake Region to have the expanded plant constructed and operational by March 29, 2002. Ms. Maguffee noted there are currently no homes in La Riva Est 1 and 2 and it is anticipated that there will be no homes or hookups before July. It is also anticipated that there will only be several hookups from houses in La Riva Est 1 and 2 during 2002. If it is found there is not now adequate capacity, there will be before there is any hookup to these particular sewer extension lines. Ms. Maguffee noted that road construction is being held up because sewer lines have not yet been laid.

Ms. Maguffee stated it is Four Seasons' position that the commission policy does not apply to this situation. She noted they are asking for permission to lay the infrastructure so that the road construction can move forward. There will be adequate and approved capacity before hookups are made. Ms. Maguffee noted they also question whether or not the policy is legal because it is basically an agency statement of general applicability.

Chairman Herrmann asked for the design capacity of the plant.

Mr. Clarkson responded the system is capable of handling 125 homes and there are 180 homes currently connected. There are 1600 lots in the area. Not all lots are built on immediately.

Chairman Herrmann asked if a connection to the present system is proposed.

Larry Cooper, Four Seasons Lakesites, responded the proposal is to put the entire infrastructure in and not connect to the existing line that goes back to the treatment facility until the treatment plant is completed.

Ms. Maguffee informed the commission there is a settlement agreement dealing with a different legal issue. As part of that settlement agreement, Four Seasons Lakesites is prohibited from connecting houses until there is adequate treatment capacity to serve those homes.

Chairman Herrmann questioned if hooking up individual homes is not an option because there is no physical connection between the present system and the proposed.

Mr. Cooper responded even if the homes were connected no construction permits could be issued because there is an agreement not to until adequate capacity is available.

Commissioner Perry asked why the commission policy is a problem.

Ms. Neff replied that in the past if the continuing authority doesn't have sufficient capacity, then the department does not allow construction permits/sewer extension to hook up to the continuing authority.

Mr. Clarkson stated the treatment plant should have been completed last summer and the department was prepared to issue the construction permit. The wastewater treatment facility company has a fairly long history of not following through timely. There are already 1600 lots connected to this facility and even though the build up is fairly slow, there are 180 homes now and there are more to come.

Responding to Commissioner Perry's question, Mr. Cooper said the 1600 do not include the two new subdivisions.

Mr. Clarkson noted if the wastewater treatment facility company does not follow through, there is already a problem regardless of whether or not the additional homes are allowed or not. Another problem is that the department may eventually have to deal with all the homeowners instead of dealing with one developer at the onset. Mr. Clarkson noted staff is optimistic this company is going to perform.

Ms. Maguffee stated lot purchasers are provided documents that contain a number of statements explaining that being hooked up to sewer is not guaranteed at any particular time. She continued that she believes the commission policy is more relevant when dealing with a standard subdivision.

Mr. Clarkson noted the big concern is if a year from now there is still nothing happening.

Commissioner Perry asked if anyone from Lake Region is in attendance.

Ms. Neff stated she has spoken with Mr. Ritter from Lake Region and he has assured her he intends to meet the March deadline.

Ms. Maguffee noted the signed contract and the bank statement are a big step forward but they are not a guarantee. Lake Region cannot start construction until they are permitted by DNR. They are waiting on a permit modification to move forward.

Commissioner Perry asked if the sewer company would be willing to indemnify Four Seasons against any damages or loss of going ahead and constructing the lines in good faith if they did not go forward.

Mr. Cooper noted he believes if they don't deliver, Four Seasons would go to the Public Service Commission (PSC) and declare them in default. The PSC would then come in and put the system in.

Ms. Maguffee stated as the continuing authority for La Riva Est they are legally obligated to provide this service.

Commissioner Perry noted she is concerned about the commission having policies. If a policy is challenged, legal fees are reimbursed if the policy was not properly promulgated as a rule.

Ms. Neff noted the department director or commission is not supposed to issue permits if they think by doing so they would cause a violation of the Missouri Clean Water Law.

Mr. Clarkson noted there are still sewer bans in several cities around the state, which in effect is what this is.

Mr. Cooper stated Four Seasons set up stand-by fees. When a lot is purchased and the water and sewer is run for the lot, the owner begins paying stand-by fees which goes into an account to build the infrastructure as the needs come. The current owner has only had that for one year. The previous owner's funds no longer exist. If the plant is not delivered, the owners will be notified that they should quit paying the stand-by fees.

Commissioner Perry asked why the roads have to be in by March if there are only a few lots sold per year.

Mr. Cooper replied they commit to when utilities will be in front of the lots and when roads will be completed in the federal property report.

Ms. Maguffee noted Four Seasons has to meet a deadline to have sewer lines in front of each lot. When a purchaser buys a lot, they are well informed that the lines are in front but they may not have a hookup until there is approved capacity.

Mr. Cooper noted they couldn't guarantee the sewer so the owner is informed of the risk.

Commissioner Perry noted it seems like the commission is being used to make the sewer company move forward.

Ms. Maguffee noted that is correct but Four Seasons also has a disagreement with the department about the applicability of this policy.

Chairman Herrmann noted the commission needs to make a decision about the permit and giving direction to perhaps change the policy to rule.

Ms. Neff recommended the commission change the policy to regulation. When a policy fills in details to a statute, it would be much better to be in a regulation. Ms. Neff continued this would relate to any time the department tells someone you may not have a sewer extension because your continuing authority is hydraulically overloaded which happens frequently.

Chairman Herrmann asked if commission direction to staff to issue the permit with the provision that there is no connection of those extensions to the present system would be acceptable.

Ms. Neff responded that would give Four Seasons what they need and would also protect the department and the environment.

Commissioner Perry asked if this action would protect the commission's interests.

Mr. Clarkson responded it does with the downside being that if the company does not perform, the development has gone further which gets more people involved.

Scott Totten, Interim Director of Staff, replied there are two safety nets here. The system is not physically being connected to the treatment plant and they are not allowing connection of homes to the system capacity through deed restrictions unless there is treatment.

Mr. Cooper said they are not allowed to build because they cannot have an individual treatment system.

Commissioner Hegi moved to **direct staff to issue the construction permit for the extension to the sewer lines with the provision that no connections be made between these extensions and the present system until capacity is available**; seconded by Commissioner Perry and unanimously passed.

Chairman Herrmann directed the staff to investigate the possibility of changing commission policy 82-1 to a regulation.

**Other**

**Table Rock Acres Subdivision**

Mr. VanGilder, Chairman of the Taney County Regional Sewer Board, spoke regarding Table Rock Acres. He noted he has spoken to the commission before regarding Table Rock Acres subdivision qualifying for a hardship grant for. Mr. VanGilder explained the first issue that was encountered was the unemployment rate. Another issue has now come about which is the rate structure for the residents once the sewer system is constructed. The rule says this has to be 2% of the median income for the residents to qualify for the grant. Mr. VanGilder stated the rate structure would have to be \$30-40 per month to qualify for the hardship grant. This particular subdivision could be as much as \$60 per month for each resident for the collection system alone. An agreement exists between Taney County and the City of Branson for this subdivision to hook to Branson's treatment plant. The collection system will cost about \$1.8 million. The subdivision is currently on septic tanks that do not meet septic tank requirements. Mr. VanGilder noted the subdivision will probably need to seek a variance regarding the rate structure. Mr. VanGilder asked for assistance to address this issue.

Chairman Herrmann asked for information on this issue at the next meeting.

**Senate Bill 741**

Ms. Neff noted the commission would like to have information on what is needed to comply with SB 741, the 2000 amendments to Chapter 644.

Commissioner Perry asked if the commission is to get biannual reports in response to the amendments.

Mr. Totten noted the reports to the commission are to be semiannual. He noted as a result of the commission's conference call regarding this issue, the commission will get a report every two months.

Chairman Herrmann noted Mr. Schroeder is to report back to the commission at its February meeting on when the 180-day clock begins relating to review of permit applications.

Mr. Totten noted staff uses a checklist to complete a cursory review of the applications. When staff actually begins detailed review of the projects, items that were not apparent during the cursory review come to light.

Chairman Herrmann noted that is why it's inappropriate to use 180 days from the date application was made.

Commissioner Perry noted with 401 projects, they have to be deemed complete within 30 days.

Chairman Herrmann noted there needs to be a similar provision for permits.

Mr. Clarkson provided commissioners copies of a VCR tape of the White River Basin Coordination meeting in Springfield.

Mr. Clarkson noted there have been a lot of innovative and alternative projects in the state.

Commissioner Perry asked if they check for heavy metals.

Mr. Clarkson responded heavy metals in wastewater from a city with no industries is very low. It's not an issue at the rates that this is applied. Mr. Clarkson noted there is a lot of good information in the tape from the session but he takes exception to some of the statements. There are five presentations; four of the presentations are almost entirely on on-site systems. However, Mr. Ogden discusses wetlands for small community systems and it is in the middle of the presentations on design and management of onsite systems which creates confusion. Mr. Clarkson recommended looking at Mr. Ogden's presentation separately from the other presentations. He continued that Mr. Ogden discusses the Ironbridge facility and refers to it as a wetlands system. This is a wetlands system following a plant that is more sophisticated than anything in the state of Missouri, which is where 95%, plus of the treatment occurs. Mr. Clarkson noted the statement is made during the presentation that wetlands can meet any limit. He stated this is not the case. Phosphorus does not come out at those rates in wetlands. Wetlands are also not effective in removing total nitrogen. Mr. Clarkson suggested thinking about the phosphorus land applied in Southwest Missouri overloading the ability of the plants and soil to utilize it. The plants in a wetlands system do not take up more phosphorus per unit area than a hay field. Most of the phosphorus that goes into these systems passes through. An additional treatment unit is necessary in order to meet the required limits.

### **Closed Session**

Commissioner Perry moved to **go into closed session** to discuss legal, confidential, or privileged matters under section 610.021(1), RSMo; personnel actions under Section 610.021(3), RSMo; personnel records or applications under Section 610.021(13), RSMo or records under Section 610.021(14), RSMo which are otherwise protected from disclosure by law; seconded by Commissioner Hegi and unanimously passed.

There being no further business to come before the commission, Chairman Herrmann adjourned the meeting at approximately 3:00 p.m.

Respectfully submitted,

Scott B. Totten  
Interim Director of Staff